10

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 362.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 18, 1909.

(21519)

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of the United States for the Second Circuit and Southern District of New York before you or some of you, between the Delaware, Lackawanna & Western Railroad Company, complainant, and the Interstate Commerce Commission and the Rahway Valley Railroad Company, defendants, a manifest error hath happened, to the great damage of the said Interstate Commerce Commission of the United States, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be herein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

2 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2nd day of December, in the year of our Lord one thousand nine hundred and eight.

[SEAL.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Allowed by
E. HENRY LACOMBE,
U. S. Circuit Court Judge for the Second Circuit.

3 (Endorsed:) Eq. 3-81. U. S. Circuit Court, Southern District of New York. The Delaware, Lackawanna & Western Railroad Company versus Interstate Commerce Commission and The Rahway Valley Railroad Company. Writ of error. Henry L. Stimson, United States attorney. Service of a copy of the within is hereby admitted. New York, Dec. 3, 1908. John L. Seager, solicitor for complainant. Filed Dec. 3, 1908. U. S. Circuit Court, Southern District N. Y. John A. Shields, clerk. E. & A. C. 2818.

4 *The President of the United States of America to Interstate*
[L. S.] *Commerce Commission and Rahway Valley Railroad Company, greeting:*

You are hereby commanded that you and each of you personally appear before the judges of the Circuit Court of the United States of

America for the Southern District of New York in the Second Circuit, in equity, on the first Monday of September, A. D. 1908, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by The Delaware, Lackawanna and Western Railroad Company and do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness, the honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, on the 7th day of August, in the year of our Lord one thousand nine hundred and eight, and of the independence of the United States of America the one hundred and thirty-third.

JOHN A. SHIELDS, *Clerk.*

JOHN L. SEAGER,
Solicitor for Complainant (90 West st).

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of September, 1908, or the bill will be taken pro confesso against them.

J. A. S., *Clerk.*

5 I hereby certify that on the 11th day of August, 1908, at the city of New York, in my district, I served the within subpœna in equity upon the within-named defendant, Rahway Valley Railroad Company, by exhibiting to Louis Keller as vice-president of said Co. at No. 29 Broadway, N. Y. City, the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated Aug. 11, 1908.

Summoned defendant Interstate Commerce Commission by service on Martin A. Knapp, chairman, personally.

Aug. 10, 1908.

AULICK PALMER, *U. S. Marshal, D. C.*

U. S. Circuit Court, Southern District N. Y., filed Aug. 11, 1908, John A. Shields, clerk.

6 In the Circuit Court of the United States for the Southern District of New York. In equity.

The Delaware, Lackawanna & Western Railroad Company, complainant. *vs.* Interstate Commerce Commission and Rahway Valley Railroad Company, defendants.	June Term, 1908. No. ———.

To the Judges of the Circuit Court for the Southern District of New York:

The Delaware, Lackawanna and Western Railroad Company, a corporation created by and existing under the laws of the State of Pennsylvania, brings this its bill against the Interstate Commerce Commission, a body created and established by and existing under and by virtue of various acts of Congress of the United States, and the Rahway Valley Railroad Company, a corporation created by and existing under the laws of the State of New Jersey. And thereupon your orator complains and says:

1. That your orator is, and was at all the time herein men-

7 tioned, a corporation duly organized and existing under the laws of the State of Pennsylvania, and is and was at all of said times a common carrier engaged in the interstate transportation of passengers and property wholly by railroad (and also partly by railroad and partly by water) between points in the States of New Jersey and Pennsylvania and points in the State of New York, and wholly by railroad between points in the State of Pennsylvania and points in the State of New Jersey. That in respect to such transportation it is subject to the act of Congress entitled an "act to regulate commerce," passed by Congress and approved February 4, 1887, and acts amendatory thereof and supplementary thereto in so far as the same are constitutional. That its principal place of business and its principal operating office is located in the city of New York, within the southern district of New York.

2. The Interstate Commerce Commission is a commission created and established, and now existing, under and by virtue of the acts of Congress hereinbefore mentioned.

3. The Rahway Valley Railroad Company is, and was at the times herein mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and is, and was at such times, a common carrier engaged in the transportation by railroad of passengers and property between points in the State of New Jersey, and by and with its connecting lines between points in said State and points in other States. In respect to the transportation last above referred to said company is subject to the said act to regulate commerce and its supplements and amendments. That its principal place of business is at Summit, New Jersey.

8 4. Your orator further shows that under a lease thereof in perpetuity it has operated for many years and is now operating the Morris and Essex Railroad, which extends from Hoboken, New Jersey, in a westerly and southerly direction through Newark, the Oranges, Maplewood, Millburn, Short Hills, Summit, Chatham, Madison, Morristown, to Denville and Dover, on the main line of your orator. In connection with said Morris and Essex Railroad there are operated a branch line leading off the main line at Roseville avenue, Newark, and extending to Montclair, New Jersey, and another branch known as the Passaic and Delaware branch, leading off the main line one and one-half miles west of Summit and extending to Gladstone, New Jersey. Your orator also operates as part of its main line running to Buffalo a branch known as the "Boonton branch," extending from Hoboken to Denville via Paterson and Boonton.

The main line of said Morris and Essex Railroad is double tracked throughout, with an additional or third track through the city of Newark, between Highland avenue, the first station west of Orange, and Millburn, and through the city of Summit to the junction with the Passaic and Delaware branch aforesaid. It enters the city of Hoboken from the west by means of a double-track tunnel four-fifths of a mile long, through Bergen Hill. The distance from Hoboken to Newark is seven miles; to Summit 20 miles; to Morristown thirty miles; to Denville thirty-six miles. From Summit to Gladstone the distance is twenty-one miles.

The territory traversed and served by the said railroad and its said branches is strictly suburban, attractive for residential purposes, and densely populated throughout. The section from Newark
9 to Morristown along the line of said road is closely built up, being practically one unbroken city, with little or no intervening undeveloped country. The population thereof has rapidly increased during the ten years last past, said increase being especially marked during the last three years. With the increased facilities for quick transportation to and from New York afforded by the new Hudson River tunnels, one of which is already in operation, with a station at complainant's Hoboken terminal, the population of said territory will be greatly augmented in the future.

A large proportion of the inhabitants of said territory travel daily over said railroad to and from their business in the city of New York, and said commuter traffic constitutes the great bulk of the business of said road. Fifty-four thousand commuters were daily handled during the month of March, 1908, over this railroad, requiring each day the use of four hundred and ninety-four coaches moving easterly, and two hundred and ninety-six coaches moving westerly, some of the coaches making two or three trips. There are run out of Hoboken daily one hundred and ten passenger trains westerly and one hundred and eight easterly in handling said traffic. East and west bound through Summit, according to the present schedule, are forty-one trains each way per day. Five passenger trains daily, each way run through, between Hoboken and Gladstone on the Passaic & Delaware

branch, and seven other daily passenger trains over this branch each way terminate at Summit.

To provide for this great commuter travel, exclusive of the cost of the new terminal at Hoboken, upwards of four million dollars have been expended in the last five years in improving the roadbed of this railroad, erecting new stations, in depressing and elevating tracks, particularly through Newark and Summit, in order to elimi-
10 nate grade crossings, in the installation of new signal devices, and generally in increasing the capacity of said line. New terminals have been erected at Twenty-third street, New York, and at Hoboken, New Jersey, at vast expense. A fleet of ferryboats, of late largely augmented, is maintained for the purpose of handling this suburban traffic across the Hudson River to New York. A second double-track tunnel is nearing completion through Bergen Hill west of Hoboken.

For some time past your orator has planned to complete from Newark to Summit the third track, five and one-half miles of which are already constructed as hereinbefore stated. Pursuant to said plan it has, in building new stations and bridges during the past two years, so constructed the same as to provide for said third track, and has acquired at great expense nearly all the necessary right of way through the Oranges. When this work is done, and your orator intends to enter upon the construction thereof during the coming year, a fifteen-minute service to Summit is to be inaugurated.

Notwithstanding the vast expenditures in improvements as aforesaid, and the increased facilities thereby afforded, and notwithstanding the fact that there has been a frequent increase in the number of trains, in the number of coaches per train, and in the motive power employed, your orator has been unable to keep pace with the growth of its suburban traffic, and the limit of the capacity of your orator's line to handle the same has been reached. Its trains are daily arriving at Hoboken overcrowded. Great difficulty is and has been experienced in the last few years in handling this traffic and in operating the trains with due frequency and on time, an absolute necessity in this class of traffic, and your orator alleges that even with
11 the completion of the third track and the new Bergen tunnel hereinbefore mentioned, said conditions will continue.

Because of the residential character of the district referred to, very little carload freight originates along the line of The Morris & Essex Railroad, the freight that is necessarily moved thereover being almost wholly for consumption in said territory. Between Hoboken and Morristown, with the exception of one side track serving a brewery at Orange, New Jersey, there are no main track connections with any industries along the line of this road.

Although your orator had at an early day constructed its Boonton branch from Denville to Hoboken and thereby diverted all main line traffic from said Morris and Essex Railroad, yet, nevertheless, prior to the year 1900 the officials of your orator were experiencing great difficulty in handling even such freight over the Morris and Essex

Division as was destined to or moving from points thereon, because
the burden imposed by the heavy suburban travel hereinbefore
ferred to. The futility of attempting to develop or carry on a freig
business on those tracks had become apparent. The situation p
sented forced upon your orator a policy which was then adopt
and since strictly adhered to, that your orator would seek all ind
trial development on its Boonton branch, which would be larg
devoted to freight traffic, and upon which would be resisted a
building up of suburban train passenger business, and that at t
same time it would discourage the location of industries on the Mor
& Essex Division and seek to confine the business there to passeng
travel. Since this policy was adopted no main line connectio
with industrial plants have been made on said railroad, and t
numerous applications for side track connections therewi
12 have been uniformly discouraged and refused. Moreov
many side tracks formerly in existence on said division we
abandoned in connection with the depression and elevation improv
ments at Newark and Summit. In many cases officials of your orat
have succeeded in inducing those contemplating the location of n
industries on the Morris & Essex Division to establish the same
the Boonton branch, where your orator is not embarrassed by subu
ban traffic.

In furtherance of the policy above described, of relieving the Mo
ris & Essex tracks of freight traffic so far as possible, freight ori
nating at Summit and west thereof and on the Passaic & Delawa
branch, destined to the east, is hauled west to Denville, then via t
Boonton branch to Newark, or to Hoboken if for points on the ma
line, thus relieving the Morris & Essex Division between Newark a
Summit of this traffic. Freight originating at Newark or Harris
destined for the west, unless consigned to a point between Summit a
Newark, is taken around to the Secaucus yard on the Boonton branc
if slow freight, and to Hoboken if to be moved in fast freight train
None of such freight is sent west over the Morris & Essex Divisio
Freight from the west on the main line destined to Newark or Harr
son is never moved over the Morris & Essex tracks, but is taken t
Secaucus over the Boonton branch and thence drilled to destinatio
But one freight train per day and one at night is operated in each d
rection over the Morris & Essex Division. These are moved durin
the lull in the suburban service. Such freight trains have to b
moved with light loads in order that speed may be maintained so a
not to block, impede, or interfere with passenger traffic. The Boo
ton branch is adapted to industrial development and is muc
13 more favorable to the movement of freight than is the Morri
& Essex Division. Approaching Summit, westbound, ther
is a grade of some eighty feet to the mile, which necessitates th
breaking up of freight trains into short trains, and there is frequen
occasion for an extra engine as a pusher up the Summit grade. We
of Summit, against westbound traffic, there is a grade of sixty-fiv
feet to the mile between Chatham and Madison. On the other hand

the Boonton branch is unembarrassed by suburban traffic, has a much lower gradient, fewer curves, and these of lower degree.

5. The Rahway Valley Railroad is a single track railroad about ten miles long. It extends from Aldene, New Jersey, where it has a connection with the Central Railroad of New Jersey in a northerly and westerly direction through Kenilworth and Springfield to Summit, New Jersey, which is also a station on the line of the Morris & Essex Railroad. It has also a branch about three-fourths of a mile long at its southerly end connecting with the Lehigh Valley Railroad at Roselle, New Jersey. That portion of the road from Kenilworth to Aldene and the branch to Roselle were acquired by consolidation effective March 1, 1905, of the defendant railroad and the New Orange Four Junction Railroad, which road was constructed for the purpose of serving industries located at Kenilworth. The construction of the portion of the Rahway Valley Railroad from Kenilworth to Summit was begun at the Kenilworth end in September, 1904, and completed to the bridge over Park avenue at Summit, shown on Exhibit A, attached hereto, one year later. The track shown on Exhibit A, extending from the Rahway Valley main line over Park avenue and approaching your orator's right of way, was not constructed until the fall of 1907. Aldene is distant fifteen miles from
11 Jersey City, and two and a half miles from Kenilworth; Roselle, sixteen miles from Jersey City and about two miles from Kenilworth. The Central Railroad of New Jersey has a connection with the Delaware, Lackawanna and Western Railroad system at Hampton Junction, some forty miles northwesterly from Aldene, at Lake Junction, a little farther north, at Phillipsburg, New Jersey, and at Scranton, Pa. The Lehigh Valley Railroad connects with the railroad of your orator at Phillipsburg, New Jersey; so that shippers on the line of the Rahway Valley Railroad are able to reach every point which they could reach were the connection made at Summit, as required by the order of the Interstate Commerce Commission hereinafter referred to. The Rahway Valley Railroad has with the Lehigh Valley Railroad and the Central Railroad of New Jersey and their various connections joint routes and through rates, the New York rate applying upon its shipments. So far as rates are concerned, therefore, there would be no advantage to the shipper on the line of the defendant railroad were the said connection made. Nearly all the freight handled over the Rahway Valley Railroad moves from Kenilworth to the Central Railroad of New Jersey and to the Lehigh Valley Railroad, and to Kenilworth from those roads. The freight moving to and from other points on the line of defendant's railroad is a negligible quantity. The traffic on the Rahway Valley Railroad in and out of Kenilworth amounts to about two hundred and fifty cars a year, and none of this freight is destined to exclusively Delaware, Lackawanna and Western points. The amount of freight which your orator would receive from the line of said Rahway Valley Railroad, if the connection ordered were made, would be fifty carloads of freight per year.

The Rahway Valley Railroad is operated at a yearly loss.
15 In 1906 the excess of operating expenses, expenditures for repairs and maintenance of way, over total income from all sources was upwards of eleven thousand dollars. In 1907 the operating expenses were in the neighborhood of about one hundred and thirty-eight per cent of the income.

The equipment of said road consists of two locomotives, two passenger cars, and one freight car used to handle local freight only.

6. From the time the defendant railroad commenced the construction of that portion of its line from Kenilworth to Summit, the officials of your orator discouraged the idea of a physical connection with its line. The first official request for such connection was made by defendant railroad in October, 1906, and was refused by complainant.

Upon such refusal by your orator, the defendant railroad filed its petition with the Interstate Commerce Commission to compel a physical connection with the Morris and Essex Railroad at Summit, a copy of which said petition is hereto attached, marked "Exhibit B" and made a part hereof. That thereafter this complainant filed its answer to the said petition, a copy of which is hereto attached, marked "Exhibit C," whereupon, after a hearing was had and evidence taken wherein the facts hereinbefore stated appeared, the said Interstate Commerce Commission, on the 24th day of June, 1908, made and filed, and thereafter served upon your orator, its report and order in said proceedings, a copy of which is hereto attached, marked "Exhibit D," and made a part of this bill.

That should said order of the Interstate Commerce Commission be enforced and your orator thereby compelled to assume the burden of freight traffic from the line of defendant railroad company, a
16 traffic not naturally tributary to your orator's railroad, the difficulties and embarrassments encountered in handling the tremendous suburban travel already overburdening its facilities will be increased. The inconvenience, difficulty, and disadvantages under which your orator labors in moving freight necessarily passing over its said rails are present at Summit as well as generally on said railroad. The situation at and immediately surrounding the proposed point of connection at Summit is shown on Exhibit A, hereto attached, hereby referred to and made a part of this bill. The tracks in green are those of the Rahway Valley Railroad, the branch extending from its main track over Parker avenue and approaching the right of way of your orator being the track which it is proposed to connect with the Morris and Essex track at or about the point marked "B" on said Exhibit A. The tracks in brown are the main line tracks of your orator, the more southerly of which is the eastbound track and the more northerly the westbound track. These tracks shortly after passing to the west of the proposed point of connection enter a depression about twenty feet below grade extending through the city of Summit and flanked on either side by concrete walls, shown on said Exhibit A. The track in yellow next south of said main tracks, together with the two adjoining tracks in yellow are used almost entirely as sidings and

storage tracks for passenger coaches and trains used and operated over the Passaic and Delaware branch hereinbefore referred to, and for all other trains starting from or terminating at Summit, such passenger trains being obliged to run onto said siding in order to clear the main line tracks for main line traffic and to turn locomotives. The space occupied by tracks in yellow next southerly of the concrete wall flanking the main line tracks on the south is the Summit

17 freight yard, which because of its limited capacity is used solely as a delivery yard for local freight. No drilling is done in said yard. Freight destined for delivery there is first detached from the regular freight train and then placed in the yard at West Summit, one and a half miles west, and thereafter switched down the main line track to the said local yard as opportunity offers. Freight originating at said local yard and empty cars therefrom are picked up by a switch engine, drilled to the yard at West Summit and there assembled into trains. Involving, as they do, the running on the main tracks between the two yards mentioned and the crossing at two points from one main line track to the other in order to enter and leave said local yard, thereby blocking both the east and westbound tracks at Summit and at the Passaic and Delaware junction, these drilling or switching movements are inconvenient and difficult to perform without blocking, impeding, and endangering the movement of passenger traffic. Breakdowns or other accidents during such movements, preventing the clearing of the main track, would inevitably result in delaying one or more passenger trains and in many cases in disarranging for the day the entire train schedule of the line. If your orator were compelled to accept cars from the line of defendant railroad at the point contemplated by said order, the inconvenience, difficulties, and dangers hereinbefore mentioned would not only be multiplied but new difficulties and dangers would be presented, for, while there would be the same movement over and across main line tracks, there would be the further task of avoiding Passaic and Delaware trains and other trains terminating at Summit, which, as hereinbefore shown, are obliged to take the siding to which it is proposed to connect the Railway Valley tracks.

18 Moreover, when the third track improvement hereinbefore mentioned is completed the track of your orator, with which a connection is ordered to be made by the commission, will of necessity become the main line eastbound track and such connection, if made, would involve a facing point switch on a main line track, which is concededly dangerous and contrary to good railroad practice.

7. And your orator further charges and avers that the said Interstate Commerce Commission had not the power or jurisdiction to make said order of June 9th, 1908.

That said Railway Valley Railroad Company is not, nor was it at the times herein mentioned, a "shipper"; nor is it or was it at the said times a "lateral, branch line of railroad" within the intent and meaning of that clause of section 1 of the act to regulate commerce as amended, which relates to construction and operation of switch

connections; neither has there been any application by a shipper for a physical connection with your orator's railroad at Summit, nor any complaint by a shipper to said commission of any failure to install or operate such connection, to the knowledge of your orator.

That it was not the intent of Congress in the use of the words "lateral, branch line of railroad" to include such a railroad as is the defendant railroad—a common carrier of persons and property generally, serving the public generally in competition with your orator, and not an adjunct of, connected with, or related to any shipping interests, except as a common carrier. Nor was it the intent of Congress in enacting said clause to enable such a railroad, on its own initiative and application, to force a physical connection with another main line railroad and thereby foist upon the latter the bur-
19 den of undesirable traffic not naturally belonging to it, to its disadvantage and embarrassment, and to the disadvantage of its other patrons who are of right entitled to the full enjoyment of its facilities. Nor was it the intent thereby to require any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in a like business.

That said physical connection, as ordered, can not be made and operated with safety; that the same is impracticable in view of the situation hereinbefore shown; that it is justified neither by the amount of business to be therefrom derived by your orator nor by any advantage which will accrue therefrom to the shipping public.

Wherefore, your orator prays:

That an order may be made requiring the defendants, The Interstate Commerce Commission and the Rutland Valley Railroad Company, to appear on or before a date to be fixed by said order, to show cause, if any it can, why the relief herein prayed for should not be granted.

That, pending the final determination of the case, an order be made herein suspending the said order of June 24th, 1908, of the said Interstate Commerce Commission, and enjoining any proceedings thereunder, either by the said commission or by the said defendant railroad.

That upon the final hearing of the case a decree be made setting aside and annulling the said order of the Interstate Commerce Commission, and perpetually enjoining any action or proceedings thereunder, and that your orator may have such other and further relief in the premises as the nature and circumstances of the case may require.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and
20 may full, true, direct and perfect answer make, according to the best of the knowledge, remembrance, information and belief of the proper members of the said defendant commission and of the proper officers of defendant railroad, but not under oath (answer under oath being hereby expressly waived), to the several matters herein charged, as fully and particularly as if the same were here

repeated and the defendants especially interrogated as to each and every of such matters:

May it please your honors to grant unto your orator a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court directed to the said defendant, the Inter-state Commerce Commission, and the defendant The Rahway Valley Railroad Company, commanding them and each of them by a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer to the premises and to stand to and abide by such order and decree as may be made against them or either of them. And your orator will ever pray.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,

[SEAL.] By EDWARD E. LOOMIS, *Vice-President.*

JOHN L. SEAGER, *Solicitor for Complainant,*
(Office and post-office address, No. 90 West street, Borough of Manhattan, city of New York.)

WILLIAM S. JENNEY,
Of Counsel for Complainant.

21 Southern District of New York,
County of New York, *ss:*

Edward E. Loomis, being duly sworn, deposes and says:

I am an officer, to wit, the vice-president of the complainant corporation named in the foregoing bill of complaint. I have read the foregoing bill, and of my own knowledge find it true except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

EDWARD E. LOOMIS.

Subscribed and sworn to before me this 6th day of August, 1908.
[SEAL.]
JOSEPH FIELL,
Notary Public, New York County.

EXHIBIT B.

INTERSTATE COMMERCE COMMISSION.

RAHWAY VALLEY RAILROAD COMPANY, *against* DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.	Complaint.

The petition of the above-named complainant respectfully shows:

I.

That your petitioner has built and equipped and is operating
22 its railroad from Aldene, New Jersey (there connecting with the Central Railroad of New Jersey), to a point in the city of

Summit, New Jersey, adjoining the right of way of the railroad of the defendant above named: The beginning and terminal points of your petitioner's road both being in the county of Union, in the State of New Jersey. That your petitioner is engaged in carrying freight from interstate points delivered to consignees on its line and in carrying freight from patrons on its line destined to interstate points.

II.

That the defendant above named is a common carrier engaged in the transportation of passengers and property between points in the State of New York and points in the State of New Jersey, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4th, 1887, and acts amendatory thereof or supplemental thereto.

III.

That your petitioner has at Summit, aforesaid, extended a lateral, or side track, to and on a grade with the right of way line of defendant company, for the purpose of effecting a switch connection with the track of your petitioner's road and the track of defendant's road and thereby enabling your petitioner to transfer its interstate freight destined to points on the line of said defendant company to the road of said defendant company and thereby enabling the said defendant company to transfer interstate freight destined to points on the line of your petitioner's company to the road of your petitioner, without change of cars.

IV.

That the point where said switch connection is desired, said connection can be made with safety and the same is entirely practicable.

23

V.

That the amount of business that will be furnished the two railroads is sufficient to justify the construction and maintenance of a switch connection.

VI.

That your petitioner has made application to the defendant company, pursuant to the act to regulate commerce, approved February 4th, 1887, and the acts amendatory thereof or supplementary thereto, for the aforesaid connection and the same has been refused.

Wherefore the petitioner prays that the defendant may be required to answer the charges herein and that after due hearing and investigation that the defendant be required to construct with the said petitioner the aforesaid switch connection and to maintain and operate

the same in connection with the petitioner on such terms and within such reasonable time as shall appear to the commission just and reasonable; and that such other and further order or orders may be entered as the commission may deem necessary in the premises and complainant's cause may appear to require.

Dated at Summit, N. J.

RAHWAY VALLEY RAILROAD COMPANY,
By E. L. McKIBBAN, *Attorney.*

24 EXHIBIT C.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

RAHWAY VALLEY RAILROAD COMPANY *against* DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.	Docket No. 1351.

The defendant above named answers the petition of the complainant herein as follows:

I.

Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph I of the said petition, except that it admits that there is a railroad built and to some extent equipped and operated from Aldene, in the State of New Jersey, to a point in the city of Summit, in the same State; that the right of way of said railroad at a point in said city of Summit adjoins the right of way of the railroad operated by defendant.

II.

It admits the allegations contained in Paragraph II of said petition.

III.

It denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph III of said petition, except that it admits that there is at Summit aforesaid a lateral or
25 side track extending from the railroad or right of way first above referred to in Paragraph I of this answer, toward or approaching the right of way of the railroad operated by defendant.

IV.

It denies the allegations contained in Paragraph IV of said petition; and it alleges that to require the said connection in said paragraph referred to is not and would not be reasonable, proper, or justifiable in the premises.

V.

It denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph V of said petition.

VI.

It admits that the petitioner made application to defendant for the aforesaid connection and that the same has been refused.

Wherefore defendant prays that the petition of the complainant herein be dismissed.

Dated December 19th, 1907.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.
By P. J. FLYNN, *Freight Traffic Mgr.*
W. S. JENNEY, *Attorney for Defendant.*
(90 West street, Borough of Manhattan, New York City.)

26 EXHIBIT D.

RAHWAY VALLEY RAILROAD COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY. } No. 1351.

(Submitted June 11, 1908. Decided June 24, 1908.)

That provision of section 1 of the act relating to switch connections with lateral branch roads does not grant unlimited discretion to this commission as to the advisability of such connection. Under the first clause of this provision it has become the duty of an interstate carrier to make connection with a lateral branch road, either upon the application of that lateral line or of any shipper, upon three conditions: (1) That such switch connection shall be reasonably practicable; (2) that it can be put in with safety, and (3) that it will furnish sufficient business to justify the construction and maintenance of such switch connection. Held, That under the facts presented the complainant is entitled to a switch connection with the defendant's line at Summit, N. J.

E. L. McKirgan for complainant.
W. S. Jenney and J. L. Seager for defendant.

REPORT OF THE COMMISSION.

LANE, Commissioner.

The Rahway Valley Railroad is a short line in the shape of an inverted Y, having its northern terminus at Summit, N. J., upon the line of the Delaware, Lackawanna & Western Railroad Company, its southeastern terminus at Roselle, N. J., on the Lehigh Valley Railroad, and its southwestern terminus at Aldene, on the Central Railroad of New Jersey. The whole of the railroad is in the single county of Union, and was originally built to supply transportation
27 facilities to the industries located at the towns of Kenilworth and Springfield, which are situated in the Rahway Valley.

These industries produce, approximately, 250 carloads of freight annually, and the total freight earnings of the Rahway Valley line on inbound and outbound traffic were $14,375 in 1906 and slightly more in 1907. This road comes before the commission asking that a switch connection be ordered at the town of Summit with the Delaware, Lackawanna & Western Railroad. It makes its petition upon the ground that it has built up to the line of the right of way of the defendant road and that such connection is in all ways practicable and is necessary to the prompt transfer and interchange of traffic between the Lackawanna and the Rahway Valley lines.

The defendant company resists this application primarily upon the ground that this portion of its road, extending from Bergen junction on the east to Dover on the north (formerly known as the Morris and Essex line), is essentially a passenger route. That section of New Jersey through which this line runs is largely occupied for residential purposes by business men of New York, and to expedite this passenger service extensive improvements have been made in the line itself and at its eastern terminus. The freight business of the Lackawanna road is conducted over the northern or Boonton branch, running from Bergen junction, through Secaucus and Paterson, to Dover, where the northern and southern branches connect. It has been the policy of the Lackawanna for some years to devote the southern branch largely to local passenger service and to conduct its general railroad business as one of the great trunk lines over the Boonton branch. In accordance with this policy but two
28 freight trains are operated over the Summit line during the twenty-four hours, both of which are devoted exclusively to the carrying of the small amount of freight originating upon or destined to points on this line, no through freight or passenger business, westbound or eastbound, being conducted thereon.

The provision of the act under which this application is made is an amendment made by the Hepburn Act in 1906, and reads as follows:

"Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the commission, as provided in section thirteen of this act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as

provided in section fifteen of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money."

It will be noticed that the law does not confer upon this commission plenary discretion as to the advisability of such connection. The act declares that the connection shall be made under certain specified circumstances and conditions. It is not contemplated by the law that appeal to this commission shall be necessary; but it is provided that in case a carrier does not comply with the duty imposed, complaint may be made by a shipper to the commission, which shall have authority to make an order compelling the connection. Under the first clause of this provision it has become the duty of an interstate carrier to make connection with a lateral branch road, either upon the application of that lateral line or of any shipper, upon three conditions: (1) That such switch connection shall be reasonably practicable; (2) that it can be put in with safety, and (3) that it will furnish sufficient business to justify the construction and maintenance of such switch connection.

(1) As to such connection being reasonably practicable, we find that there are no engineering difficulties to surmount in making this connection. A third track exists at Summit which is in the nature of a siding running up to an ice house and a coal dump, with which it is entirely practicable for the Rahway Valley to connect without incommoding the business of the Lackawanna road.

(2) Such connection can be made with entire safety to the traffic of the Lackawanna.

(3) The uncontradicted testimony of the complainant's witnesses was that this connection would furnish at least 50 carloads of traffic a year at the present time, with the prospect of a greater volume of tonnage as the direct connection to the west over the Lackawanna becomes of value to the industries upon the Rahway Valley line. If this were an application for a side track to an industry, we should without question regard this volume of freight sufficient to justify the building and maintenance of a switch connection, and we see no other test which should be applied, because this is a line of railroad reaching several industries. It is true that the industries lying along this line have access to the markets generally through its southern connections; but it is undisputed that some of the industries on the Rahway Valley road have found it to their advantage to route their freight over the Lackawanna line, even at the expense to themselves of making transfer at Summit by wagon.

The idea is somewhat scouted by defendant that such a connection as is here asked for may be warranted by reason of the superiority of the service which thereby can be obtained; but the law itself does not seem to require this commission to ask the reason for the shipper's preference; and as it has taken thirty days for a carload of freight to reach Kenilworth from Buffalo by one of the present connections

of the Railway Valley line, it would appear that the character of the service might be a matter of no inconsiderable moment to the shipper. A single industry, or a group of industries, which already have connection with another road, would not be debarred from availing themselves of the right to a other connection under this statute; and we are constrained to look upon this case from the standpoint of the shipping public rather than from that of the Railway Valley Railroad.

The provision of the statute, as we construe it, is based upon what might be termed the "open-gateway policy"; the thought of Congress was for the shipper—the manufacturer, the mine owner, the lumberman—who wishes to market his product in the widest practicable field and have the most direct connection therewith. Such theory is in harmony with the long-standing provision in section 3 of the act requiring carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith. And it is
31 further in step with the spirit of that requirement of section 1 that carriers shall furnish transportation upon reasonable request therefor and shall establish through routes and just and reasonable rates applicable thereto. These are all essentially shippers' provisions, and the amendment of 1906 respecting switching connections is but complementary. The shipper who heretofore might tender his freight at the yards of the defendant in Summit may now build a track, or procure one to be built, which will enable him to load his car at his factory and tender the loaded car itself to the carrier. The fact that the track from the industry to the main line has already been built by an independent railroad does not in anywise invalidate or affect the strength of this conclusion.

Another question, of course, arises and one which is not herein dealt with as to the reasonableness of and the necessity for establishing a through route between the two lines and fixing joint rates governing their traffic. It does not follow that all branch railroad lines having switch connection with a main line of railroad are entitled to joint rates; another provision of the act comes under consideration and application in such regard.

We think the complainant should be granted a switch connection with the defendant's line at Summit, which shall be made with the existing siding leading to the ice house and a coal dump thereon, and the expense of such connection shall be borne by the complainant. An order will issue accordingly.

Such order will be made subject to modification at any time when the defendant so changes its track at Summit as to make such connection impracticable or unsafe.

32 ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 24th day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

RAHWAY VALLEY RAILROAD COMPANY *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.	No. 1351.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendant, the Delaware, Lackawanna & Western Railroad Company, be, and it is hereby, notified and required to construct, on or before the 1st day of September, 1908, and maintain and operate thereafter during a period of not less than two years, in connection with the transfer of traffic from the existing siding, leading to the ice house and coal dump thereon of said
33 Delaware, Lackawanna & Western Railroad Company, to the line of the complainant, the Rahway Valley Railroad Company, in the town of Summit, N. J., and in the opposite direction; but the expense of such connection shall be borne by said complainant. This order is subject to modification at any time when said defendant so changes its tracks at Summit as to make such connection impracticable or unsafe.

[1157]

35 (Endorsed:) In the Circuit Court of the United States for the Southern District of New York. In equity. The Delaware, Lackawanna and Western Railroad Company, complainant vs. Interstate Commerce Commission and Rahway Valley Railroad Company, defendants. Bill of complaint. John L. Seager, solicitor for complainant. W. S. Jenney, of counsel. U. S. Circuit Court, Southern District N. Y. Filed Aug. 7, 1908. John A. Shields, Clerk.

36 (Copy)

OJF-JHR

Address reply to
"The Attorney-General"
And refer to initials
and number.
O. J. F.
142,802-1

DEPARTMENT OF JUSTICE,
Washington, August 14, 1908.

WM. S. SHIELDS,
Clerk of the United States Circuit Court,
Southern District of New York,
New York City.

SIR: Enclosed herewith you will find the certificate provided for by section 16 of the "act to regulate commerce," as amended by section